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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,112	10/31/2003	David P. Pollock		8919
23439	7590	05/04/2007	EXAMINER	
DENTSPLY INTERNATIONAL INC			KILKENNY, PATRICK L	
570 WEST COLLEGE AVENUE			ART UNIT	PAPER NUMBER
YORK, PA 17404			3732	
MAIL DATE		DELIVERY MODE		
05/04/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/698,112	DAVID POLLOCK ET AL.
	Examiner	Art Unit
	Patrick J. Kilkenny	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 January 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5 and 9-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1, 5, 9, 11-14, 17, 18, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Mayer (US Pat. App. Pub. 2004/0259054).

Mayer discloses an ultrasonic dental scaler insert 26 comprising a tip 24, a magnetostrictive member 22, a connecting member 20, a nozzle 35, and a generally cylindrical soft grip 50 comprising rigid polymeric material as well as elastomeric polymeric material (page 1, [0002]-[0007]; page 1-2, [0025], [0027]-[0028], [0030]; see Figures 1, 11, and 12). Mayer also discloses the tip being connected to a first end of the connecting member, the magnetostrictive member being connected to a second end of the connecting member, and the nozzle having a rigid wall and being supported by the connecting member (page 1, [0005], [0024]; see Figures 11 and 12). Mayer further discloses the soft grip having a generally cylindrical rigid polymeric inner wall having a generally cylindrical channel 30 affixed/bonded to and supporting a generally cylindrical elastomeric outer wall 52 (page 1, [0007]; page 2, [0025], [0029]; see Figures 11 and

12). Mayer discloses that the rigid polymeric inner wall circumscribes the connector and forms a nozzle for the scaler insert (see Figures 11 and 12).

Regarding claims 1, 5, 9, 11, 13, 14, 17, 18, and 20, the method of making the dental scaler insert having a soft grip is inherently shown in the formation of the disclosed implant of Mayer, therefore these method claims are subject to the previously described rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 10, 15, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer in view of Stearns'811 (US Patent No. 6,095,811). Mayer discloses the ultrasonic dental scaler insert that shows the limitations as described above; however, Mayer does not disclose the soft grip snap-fit onto the connector or the soft grip snap-fit onto the dental scaler insert or first and second half sections.

Stearns'811 teaches a gripping handle with snap-fit connections for fitting around a diagnostic instrument (col. 3; lines 6-9; col. 4, lines 11-31; see Figure 1). Stearns'811 also teaches a first 32 and second 34 half-section member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ultrasonic dental scaler insert of Mayer to incorporate the teachings of Stearns'811 to

produce a scaler soft grip that was easily and releasaby attached to and removed from the scaler insert for efficient cleaning, disposal, and reuse of the scaler.

Regarding claims 2, 3, 10, 15, 16, and 19, the method of making the method of making the dental scaler insert having a soft grip is inherently shown in the formation of the disclosed implant of Mayer, therefore these method claims are subject to the previously described rejection.

Response to Arguments

Applicant's arguments filed 1/8/2007 have been fully considered but they are not persuasive. The applicant argues that Mayer does not disclose a grip member with a polymeric inner wall and an elastomeric outer wall. Paragraph 0025 states that the inner wall, or scaler body 30, is made of hard plastic material (polymeric), and paragraph 28 discloses that the outer wall 52, is made of silicone rubber (elastomeric). Figure 11 shows that the outer elastomeric wall extends along the length of the polymeric inner wall. It may not extend the entire length, but clearly the majority, and the applicant never claims the entire length. The walls of 30 and 54 are also conjoined by definition [paragraph 0029].

It is also noted that Stearns does disclose two half sections of the grip (23 and 34). The applicant recognizes this in the first full paragraph on page 8 of the applicant's arguments. The teaching to combine simply utilizes the snap fit function of Stearns to allow for effective cleaning. There is nothing in the structure of Mayer that would preclude this modification as taught by Stearns. Furthermore, it would have been

obvious to one having ordinary skill in the art at the time the invention was made to make the grip of Mayer into two half sections that snap together, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J. Kilkenny whose telephone number is (571) 272-8684. The examiner can normally be reached on Mon-Fri, 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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